



Empire Justice Center

119 Washington Ave. ♦ Albany, NY 12210

Phone 518.462.6831 ♦ Fax 518.462.6687

www.empirejustice.org

Joint Legislative Public Hearings on 2021-2022 Executive Budget Proposal

Human Services

February 9, 2021

Prepared by:

Susan Antos, Senior Attorney

Catherine Callery, Senior Attorney

Eden Forsythe, Vice President of Policy and Government Affairs

Inez Haettenschwiller, Attorney Emeritus

Alexia Mickles, Staff Attorney

Emilia Sicilia, Senior Attorney

Kristin Small, Senior Staff Attorney

Fiona Wolfe, Senior Attorney

INTRODUCTION

We appreciate the opportunity to submit this testimony on behalf of Empire Justice Center. This testimony addresses issues in the Executive Budget that pertain to human services.

Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (Long Island). Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers in a wide range of poverty law areas including health, public assistance, domestic violence and SSI/SSD benefits.

Support for New York State’s human services has never been more essential. The COVID-19 pandemic has laid bare deep disparities in health and income security and vulnerabilities in our social safety net. The pandemic has been devastating to those who are low income, elderly, or who have medical conditions, most especially in Black and brown communities. Strengthening access to health care and other benefits will be a critical part of this State’s recovery from this crisis. We urge the Legislature to decisively affirm its Constitutional commitment to aid and support the most vulnerable New Yorkers in this very difficult time.

This testimony touches on the work of the New York State Office for the Aging, the Office of Children and Family Services, the Office of Temporary and Disability Assistance, the Office of New Americans, the Department of State, and the Department of Health. We will discuss the positions set forth below:

- 1. Invest a Total of \$2.767 Million in the Managed Care Consumer Assistance Program (MCCAP)**
- 2. Provide Level Funding for the Disability Advocacy Program (DAP)**
- 3. Support Immigrants by Providing Sufficient Funding for Immigration Legal Services**
- 4. Eliminate the “Benefits Cliff”**
- 5. Support the Governor’s Proposal to Make Child Care Affordable**

INVEST A TOTAL OF \$2.767 MILLION IN THE MANAGED CARE CONSUMER ASSISTANCE PROGRAM (MCCAP)

The Managed Care Consumer Assistance Program (MCCAP), a statewide initiative run through the New York State Office for the Aging (NYSOFA), provides seniors and people with disabilities critical assistance in accessing Medicare services and reducing health care costs. We are grateful that the Executive Budget provides ongoing funding for MCCAP at its current level, \$1.767 million. However, given that the funding has been at a reduced level for several years, we are asking that the Legislature provide an additional \$1,000,000 in funding. This additional investment will increase the program's capacity and respond to the increased demand for Medicare navigation assistance brought about by New York's growing aging population and changes in the health care delivery and insurance landscape. This is especially critical as we continue to deal with the unprecedented global pandemic due to COVID-19. Seniors and people with disabilities deserve every bit of assistance we can provide in order to access health care services and reduce costs both during and after the public health emergency.

The six MCCAP agencies partner with the New York State Office for the Aging (NYSOFA), the New York State Department of Health (DOH) and the Center for Medicare and Medicaid Services (CMS) to provide training, technical support and assistance to local Health Insurance Information Counseling and Assistance Program (HIICAP) offices and other nonprofit organizations working directly with Medicare consumers across New York State. Additionally, MCCAP agencies work directly with consumers to provide education, navigational assistance, legal advice, informal advocacy and direct representation in administrative appeals. We serve clients in their communities and provide services in their native languages; consumers also increasingly reach us via internet and our telephone helplines, as well as through our educational materials and referrals from HIICAPs.

It is an essential time to shore up funding for MCCAP. As the aging population increases, so does the number of Medicare beneficiaries in New York who rely on MCCAP's assistance in understanding and accessing their health benefits. In the last year, MCCAP remained available to assist Medicare beneficiaries during the public health emergency, helping to navigate the flood of false or misleading information related to COVID-19 testing, vaccination, and scams/fraud. Medicare beneficiaries were forced to access healthcare services in new and unfamiliar ways, such as virtual check-ins and telehealth. Even "simple" tasks such as obtaining prescription refills at their trusted pharmacy became complicated, making MCCAP assistance even more necessary. MCCAP continued its work helping individuals maximize their benefits under the highly complex Medicare Part D program, as well as assisting dual-eligible individuals and other Medicare beneficiaries with health care access issues besides Part D. In addition, MCCAP has responded to a range of new needs that have resulted from the changing health care landscape. For example, MCCAP has fielded a high volume of calls from new Medicare beneficiaries in need of assistance transitioning from other forms of insurance, including the Essential Plan, Qualified Health Plans, Marketplace Medicaid and Medicaid Managed Care plans. These transitions, which are necessary because Medicare beneficiaries are, for the most

part, excluded from Marketplace products and Medicaid Managed Care, can seriously disrupt care continuity if not navigated carefully.

MCCAP is also ideally positioned to help Medicare beneficiaries understand and adapt to any changes to Medicare, and other health coverage programs that work with Medicare, that may arise out of the federal debates about the future of healthcare in America. In the past year, MCCAP was contacted by many Medicare recipients anxious to know what changes may lay ahead for them as we continue through the public health emergency and beyond, and what they could do to anticipate those changes. Uncertainty about changes to Medicare and Medicaid has undoubtedly grown since this time last year as New Yorkers, particularly older adults and people with disabilities, struggle with urgent and shifting health needs during the crisis.

Recommendation: We urge the Legislature to negotiate with the Executive to increase MCCAP funding by \$1,000,000 for a total investment of \$2.767 million.

PROVIDE LEVEL FUNDING FOR THE DISABILITY ADVOCACY PROGRAM (DAP)

For over three and a half decades, the Disability Advocacy Program (DAP) has been helping low income disabled New Yorkers whose federal disability benefits (Supplemental Security Income (SSI) or Social Security disability (SSD) were denied or cut off. The disability appeals process is very complex, and DAP works to overcome the many obstacles faced by claimants along the way. Financial issues, insecure housing, homelessness, and the very symptoms of a disability are some of the factors that often make it very difficult for claimants to gather evidence necessary to their claim.

Since the inception of DAP in 1983 through June 2020, DAP providers, who work in every New York county:

- Assisted over 233,000 disabled low-income New Yorkers.
- Helped put over \$865 million in retroactive benefits in their hands to be spent in local economies.
- Generated over \$238 million in federal funds paid back to New York State and the counties.
- Saved over \$315 million in avoided public assistance costs.

Consistently successful in about 72% of all cases, DAP services help stabilize people's incomes, which in turn helps to stabilize housing, health, and quality of life overall. For every dollar invested in DAP, at least \$2 is generated to the benefit of New York's state and local governments.

In last year's final budget, the DAP program was funded at \$8.26 million, which included an additional investment of \$3 million from the State Legislature over the Executive Budget allocation of \$5.26 million. With this continued investment, DAP providers have helped address

the increased need for representation among vulnerable New Yorkers involved in a disability appeals process that has become ever more challenging.

Right now, DAP clients are uniquely disadvantaged and DAP services are ever more critical. Many suffer from poverty and health conditions that render them vulnerable to COVID-19. They also often lack access to the technology – often basic technology such as cell phones with sufficient minutes and data – and other resources necessary to stay safe and navigate a new socially distanced environment. This includes access to the Social Security Administration (SSA), which has been closed almost entirely for in-person services. Many DAP clients are precariously housed, or homeless, and lack of privacy makes it nearly impossible, for example, to participate in a remote hearing. Cases are stalled as medical providers and case managers are unable to provide the kind of detailed evidence necessary for a claim to proceed.

Claimants had already been contending with several new harmful regulations that made it more difficult to obtain and maintain Social Security benefits. Since 2019, applicants for disability benefits in New York began facing an additional hurdle to the appeal process, reinstatement of a mandatory “reconsideration” step before a hearing can be held. This desk review results in few successful appeals, with only about 17% of claimants being approved at this stage. It also has the additional negative impact of discouraging disabled New Yorkers from pursuing valid claims. Changes to Social Security rules about how evidence is accepted or evaluated have also made the process of obtaining and maintaining disability benefits significantly difficult. One of SSA’s most damaging changes has been to eliminate the additional weight and consideration previously accorded to the opinion from a claimant’s treating physician.

As COVID-19 continues, we anticipate a flood of backlogged claims. Experts predict an increase in new applications for disability benefits, as the long-term effects, including lung scarring, heart damage, and neurological and mental health effects, manifest for many individuals.

As a result, the demand for DAP services and the importance of representation remains as high as ever. Each low income individual with a disability we cannot serve is left without assistance to navigate the increasingly complex Social Security Administration (SSA) disability benefits appeals process. The inability to successfully access this essential benefit will result in more housing instability and worsening health, with a disproportionate impact on Black and brown communities. More than half of the clients served by DAP are individuals of color.

Thus, while DAP is once again funded in the Executive Budget at \$5.26 million, that funding level is insufficient to respond to the demand for DAP services during the current public health crisis. Without a restoration of the \$8.26 million funding level, DAP providers will be unable to address the new challenges faced by low income disabled Social Security claimants in New York in this very difficult time.

Recommendation: We are asking that the Legislature restore last year’s level of funding, by investing a \$3 million add-on to the Executive Budget level to bring statewide funding to a total of \$8.26 million. Half of this cost is borne by the local counties, leaving the actual cost of the

request to the Legislature at \$1.5 million. Maintaining funding will allow providers to address the additional obstacles faced by claimants with disabilities, including the recent regulatory changes that make the process longer and more difficult for claimants, as well as the challenges presented by the current pandemic.

SUPPORT IMMIGRANTS BY PROVIDING AT LEAST \$10 MILLION FOR IMMIGRATION LEGAL SERVICES

Sufficient funding for civil legal services for immigrants regardless of status remains a fundamental challenge nationwide. In New York, providing legal services to immigrants facing deportation, seeking asylum, or needing basic legal assistance must remain essential in the 2021-22 budget year. This year, we are especially appreciative of the Governor's efforts to include \$10 million in the executive budget for the Liberty Defense Project, and urge the Legislature to support at least \$10 million in funding for the Liberty Defense Project.

The COVID-19 Pandemic has brought about new challenges in the area of immigration legal services. We have seen a number of trends that we expect to continue well into 2021:

- Outreach to clients and educational activities in the immigrant communities became much more difficult during the Pandemic. The public health crisis has suspended most, if not all community outreach activities such as know-your-rights trainings, making it more difficult to reach clients in immigrant communities, while demands for legal information about new laws and regulations only increased during the Pandemic.
- Incidents of intimate partner violence appear to be increasing in some immigrant communities. On Long Island where Empire Justice Center provides immigration legal services, we have seen an increase in incidents of intimate partner violence compared to pre-Pandemic times, especially in relations to clients seeking U visas, which is a type of nonimmigrant visa set aside for victims of certain types of crimes.
- Legal services providers have become a source of information and referral for all social services. The Pandemic has made existing problems more acute and blended for people in immigrant communities. If problems such as unemployment, eviction, lack of benefits, intimate partner violence, and removal proceedings could have been navigated separately through different attorneys and service organizations, the Pandemic has melded the challenges into a single landscape, often with a single attorney as the main person triaging services and providing reliable advice.
- Housing legal needs, especially in eviction and foreclosure defense for renter and homeowners, have become essential during the Pandemic and will extend well into 2021 after the moratorium lifts. Even with the moratorium in place, illegal evictions persist, especially against renters in immigrant communities.

Recommendation: We ask that the Legislature support at least \$10 million in funding for the Liberty Defense Project, as provided in the Executive Budget.

ELIMINATE THE BENEFITS CLIFF

New York's State's public assistance (PA) eligibility and budgeting rules do not support a transition to self-sufficiency. Instead, they set people up for a steep fall off the "benefits cliff" – disrupting that potential transition by removing the assistance out from under them at a moment when their stability is still very precarious. For example, earnings disregards, designed in 1997 to allow people to earn up to the federal poverty level before they lost eligibility for public assistance, no longer function effectively because rules have not been adjusted for inflation. In most counties, working families lose eligibility for cash assistance when their earnings reach 70% of the federal poverty level (already an extremely low standard for the cost of living in New York State). Further, eligibility rules require that families spend down nearly all their resources, including retirement savings, so that they have no cushion for emergencies as they transition off public assistance. Finally, income meant for the support of children such as social security survivors' benefits from a deceased parent, must be applied to support the entire household. This rule keeps families with children needlessly below the poverty level. As a result, we urge the Legislature to amend the budget to include provisions that will eliminate or expand public assistance resource rules, allow recipients to earn up to the poverty level by repealing the rule that keeps them from doing so, and allow parents to exclude children with income, such as social security survivor's benefits, from the public assistance budget.

A. Eliminate public assistance resource rules or expand exemptions

Asset tests originally were put in place to ensure that limited dollars for public assistance would go to the neediest. Contrary to expectations, over time it became apparent that many families would cycle back on to assistance as soon as they experienced some expense out of the ordinary – a car repair, for example. States began to recognize that the "asset test" was, in fact, counter-productive to the goal of financial independence, as it didn't allow households to save up for emergencies, thus ensuring that any given crisis would strike a devastating blow to the household's financial security. Since welfare was "reformed" in 1997, an increasing number of states are eliminating consideration of assets or increasing the exemptions for assets. New York and 33 other states have eliminated their SNAP asset tests completely. Eight states have eliminated their PA asset tests completely: Alabama; Colorado; Hawaii, Illinois, Louisiana, Maryland, Ohio, and Virginia.¹ An additional five states (California, Connecticut, the District of Columbia, Montana and Vermont), expressly exempt retirement accounts.² Especially in this time of economic downturn, it is heartbreaking to see individuals not only having to cash in their modest retirement accounts as a condition of eligibility for public assistance, but also having to lose a portion of their accounts as a tax penalty for prematurely making these

¹ The Welfare Rules Databook: State TANF Policies as of July 2019, Table I.C.1. Asset Limits for Applicants," at pp.79-80. Urban Institute, 2019, <https://wrd.urban.org/wrd/databook.cfm>

² Id. at pp. 185-87.

withdrawals. It is time for New York to amend Social Services Law § 131-n to conform its public assistance resource rules to its SNAP resource rules.

Critically, the concern that eliminating the asset test or increasing exemptions would lead to higher costs and an increase in recipients has been without merit. Since public assistance applicants generally have little or no cash, eliminating or increasing asset limits has had little impact on caseload. Louisiana eliminated its TANF asset limit in 2009 and five years later reported little to no change in the number of families receiving benefits in the years since.³ Ohio—the first state to eliminate its TANF asset limit, in 1997— saw no increase in the number of families receiving aid as far forward as 2014.⁴ Ohio, the first state to eliminate consideration of assets found no increase in the number of Temporary Assistance for Needy Families (TANF) recipients.⁵ The Urban Institute found that eliminating asset tests leads to an increase in bank accounts, and to the amount of savings.⁶ Having a bank account helps families conduct basic financial transactions, save for emergencies, build credit history, and access, fair, affordable credit.⁷

Furthermore, eliminating consideration of assets when calculating PA eligibility, as New York does when calculating SNAP benefits, would provide an opportunity to relieve social services districts of burdensome administrative and fiscal responsibilities: It would simplify and streamline the application and recertification process. The gathering, reproducing, investigating, and filing of paperwork concerning assets is time consuming and expensive for both applicants/recipients and the social services districts. Virginia found that although it spent approximately \$127,000 more on benefits for 40 families, it saved approximately \$323,000 in administrative staff time, resulting in a net savings of \$195,850.⁸ Colorado estimated a caseworker savings of 90 minutes/case.⁹ By saving time in processing applications and re-certifications, districts are better able to meet their mandated time frames for making eligibility decisions and, further, can allocate limited staff resources to other functions.

³ R.Vallas, J.Valenti, Center for American Progress, “Asset limits are a barrier to economic Security” (9/14/14) <https://www.americanprogress.org/issues/poverty/reports/2014/09/10/96754/asset-limits-are-a-barrier-to-economic-security-and-mobility/>

⁴ Id.

⁵ Center on Budget and Policy Priorities, “Eliminating Asset Limits: Creating Savings for Families and State Governments,” April 2018, <http://www.cbpp.org>

⁶ Caroline Ratcliffe, Signe-Mary McKernan, Laura Wheaton, Emma Kalish, Catherine Ruggles, Sara Armstrong, Christina Oberlin, “Asset Limits, SNAP Participation, and Financial Stability,” Urban Institute, June 2016, <https://www.urban.org/sites/default/files/2016/06/29/2000843-asset-limits-snap-participation-and-financial-stability.pdf>

⁷ Federal Deposit Insurance Corporation, “What is Economic Inclusion?” 2014, <http://www.economicinclusion.gov/whatis/>

⁸ Code of Virginia, “Economic Impact Analysis,” Virginia Department of Planning and Budget, Volume 22, Section 40-295-50, 2003.

⁹ Aleta Sprague, Rachel Black, “State Asset Limit Reforms and Implications for Federal Policy,” New America Foundation, 20126, <https://www.newamerica.org/asset-building/policy-papers/state-asset-limit-reforms-and-implications-for-federal-policy/>

The Empire Justice Center therefore recommends that as part of the State budget, the asset limits in Social Services Law 131-n be eliminated, or raised, and if not eliminated entirely, that retirement accounts such as IRAs be exempted in their entirety. [See: A.1546 (Rosenthal)]

B. Enhance public assistance earnings disregards

Public assistance grants are meagre, in amounts significantly below the poverty level. In 1997 New York State promised working families on public assistance that they could earn their way to the poverty level while on public assistance by enhancing the state's earnings disregards. Social Services Law § 131-a(8)(a)(iii). However, this rule has two problems. First, it never applied to single individuals and second, because of a second rule, Social Services Law § 131-a (10), which was never repealed and which provides an earnings ceiling of 185% of the standard of need,¹⁰ working families become ineligible for any assistance long before they ever earn up to the poverty level.

1. Repeal Social Services Law 131-a (10)

At the time of the enactment of New York's welfare reform law in 1997, 185% of the standard of need was closer to the poverty level than it is today. The poverty level has been adjusted upward every year, while the public assistance grant levels have barely increased. As a result, the poverty level is now significantly higher than 185% of the standard of need in every county. Working public assistance recipients become ineligible at 185% of their district's standard of need before they ever come close to having earnings that reach the poverty level.

In no county of the state is a public assistance household of three with wages allowed to reach the poverty level. In fact, the 185% cap results in families in most counties losing public assistance eligibility when they are near or just above 70% of the poverty level. See: https://empirejustice.org/resources_post/standard-need-charts/. In a handful of counties (Dutchess, Nassau, Orange, Putnam, Rockland) where the standard of need is higher because of higher housing costs, families lose eligibility at about 80% of the poverty level.

Enhanced earnings disregards would assist recipients in paying their rent and meeting critical transportation expenses if they were able to work their way up to the poverty level as promised by Social Services Law § 131-a(8)(a)(iii). Repealing Social Services Law 131-a (10) will help assure the success of families leaving welfare, easing their transition to work, by allowing them to earn their way to poverty before losing cash assistance. Because about one of every two dollars earned will continue to be applied to reduce the public assistance grant,¹¹ the cost of enacting this change will be minimal and will end up saving the state money as vulnerable working families are stabilized.

¹⁰ The standard of need refers to the maximum level of cash assistance available to a particular family, based upon the total of the allowances set forth by family size in 18 NYCRR 352.2 and 352.3.

¹¹ *Temporary Assistance Budgeting: 2020 Earned Income Disregard and Poverty Level Income Test*, available at <https://otda.ny.gov/policy/directives/2020/ADM/20-ADM-06.pdf>

2. *Include single individuals in the earnings disregard*

The earnings disregards in Social Services Law § 131-a(8)(a)(iii) only apply to households with children. This provision should be amended to include adults without children. The exclusion of single individuals from the enhanced earnings disregard leads to increased homelessness and deep poverty. It is especially cruel because the public assistance grant is markedly lower for single individuals, who were excluded from the public assistance shelter allowance increases in 2010. Thus, a single individual is provided less than \$200 per month for housing in most social services districts; with 15 districts providing grants between \$200 and \$237; four districts providing between \$257 and \$288, and two districts with grants of \$302 and \$309 per month. Allowing single individuals to disregard a portion of their earnings would support their ability to maintain employment and would alleviate homelessness caused by insufficient income.

C. Allow caretakes to exclude children with income from the public assistance household

The public assistance grant, which for most families does not exceed 50% of the poverty level,¹² is especially inadequate to support families with children. One way to support struggling families is to allow children who have income from absent or deceased parents (such child support, or Social Security Survivor's or Disability benefits from the account of a deceased or disabled parent) to retain that income and remain off of the public assistance grant if it is beneficial for the family of the child to do so.

Social Services Law § 131-c (1) currently requires that when a minor is named as an applicant for public assistance, his or her parents and minor brothers and sisters must also apply for assistance and be included in the household for purposes of determining eligibility and grant amount. Although the statute uses the phrase "minor brothers and sisters," the law has been used to require the income of half-siblings to be applied as income against the other half-sibling to reduce the amount of the public assistance benefits of the child with no income. Under the current statute, the unearned income of any child, such as child support or social security survivor's benefits is considered available to the entire household, and reduces the entire grant of the household accordingly, unless disregarded under some other provision of law.

A change in this law would particularly benefit non-parent caregivers of children who have parents who are unable to care for them due to the death, drug addiction, incarceration or disability of the parent. These relatives are often on fixed incomes with limited resources. Studies show that children placed in care with relatives fare much better emotionally and intellectually than children who live in foster care with strangers.¹³ Current law requires the

¹² In most counties, the total public assistance grant for a household of two, meant to cover shelter, utilities, heating and all other needs is under \$650 per month. 18 NYCRR 352.2, 352.3. The poverty level for a household of two is \$1451 per month. 86 Fed. Reg. 7732,7733, 1168 (2/1/21).

¹³ G.Wallace and E.Lee, *Diversion and Kinship Care: A Collaborative Approach Between Child Welfare Services and and NYS's Kinship Navigator*, *Journal of Family Social Work*, Vol 16 p. 418,419 (2013),

income of half siblings in a public assistance household be applied to support the income of any other half-siblings in the household. This means that when a non-parent caregiver, who has no legal responsibility for the support of a child in their care takes in a second child with income, the public assistance grant of the first child is reduced. For example:

Mary Smith, a grandparent caregiver, lives on a fixed income of Social Security Retirement benefits, and is taking care of her grandchild, Daniel. She receives a “child only” grant from her social services district, which is calculated without taking Mary’s income into consideration. If Mary takes in Daniel’s half-sibling, Peter, who receives Social Security Survivor’s benefits because his father has died, that income will be applied against the amount of public assistance that Mary receives to support Daniel, resulting in the reduction or elimination of Daniel’s benefit.

This illegal¹⁴ and unfair result would be avoided if caregivers could choose to apply for public assistance only for the half-sibling with no income. That child would remain eligible for the child only grant, and the grandchild with income would continue to be supported with his own income.

We urge the Legislature to amend Social Services Law 131-c as part of an Article VII budget bill to make this important change. Model language can be found in a bill that was passed by both houses in the 2019-2020 legislative session [S.6017A (Persaud)/A.4256A (Hevesi)]. Although that bill was vetoed by the Governor, he indicated that its intent was laudable and should be considered during budget negotiations.¹⁵ Therefore, we expect that the Governor would look more favorably upon this bill if it were to be included in the budget.

Recommendation: The Legislature should amend the budget to include provisions that will eliminate or expand public assistance resource rules, allow recipients to earn up to the poverty level by repealing the rule that keeps them from doing so, and allow parents to exclude children with income, such as social security survivor’s benefits, from the public assistance budget.

SUPPORT THE GOVERNOR’S PROPOSAL TO MAKE CHILD CARE AFFORDABLE

Child care in New York State is funded in large part by federal funds – the Child Care Development Block Grant (CCDBG) and federal TANF money that is transferred into New York’s Block Grant fund. The commentary to the CCDBG regulations states that to assure equal access to child care, child care must be affordable, and recommends that parent copayments not exceed 7% of household income.¹⁶ New York State has ignored this guidance and has maintained a standardless formula at 18 NYCRR 415.3 [e] [3] unchanged since 1987. This regulation gives social services districts total discretion to choose a multiplier between 10% and

available at

http://www.nysnavigator.org/pg/professionals/documents/Wallace_Lee_2013_Diversion.pdf

¹⁴ Under Social Services Law §101 siblings are not responsible for the support of each other.

¹⁵ Veto Message. 164 (2019-2020) at

<http://www.nystatewatch.net/www/NY/19R/pdf/NY19RSB04809VET.pdf>

¹⁶ 81 Fed.Reg. 67438, 67516 (9/30/16).

35% that is then applied to the family's annual income above the state income standard (the equivalent of the federal poverty level) to determine the household's annual copayment amount. The larger the multiplier chosen by the county, the smaller the child care benefit received by the family. The inequity in the child care benefit offered to similarly situated families (same family size, same income) varies by as much as 300% depending on the county in which a family resides. As indicated by the attached Chart A, a copayment based upon a 35% multiplier is not an affordable copayment, especially for families with incomes over 150% of poverty.

Chart A shows the current copayment structure and Chart B shows the copayment proposal set forth in the governor's budget. These charts indicated that for a family of three at 200% of poverty (\$43,440), in a county with a 35% multiplier:

- Current law: the family will pay **\$7602 a year, or 17.5% of their gross income** as a child care co-payment.
- Budget proposal: the family will pay **\$4344 a year, or 10% of their gross income** as a child care co-payment.

For family of three at 175% of poverty (\$38,010/year) in a county with a 35% multiplier:

- Current law: the family will pay **\$5701 a year, or 15% of their gross income** as a child care co-payment.
- Budget proposal: the family will pay **\$3258 a year, or 8.6% of their gross income** as a child care co-payment.

For a family of three at 150% of poverty (\$31,270.00) in a county with a 35% multiplier:

- Current law: the family will pay **\$3801, or nearly 12% of their gross income** as a child care copayment.
- Budget proposal: the family will pay **\$2910, or 8.8% of their gross income** as a child care copayment.

The Empire Justice Center strongly supports the Governor's Article VII bill (ELFA, § Z) amending New York's Social Services Law 410-w (8) and 410-x (6). This bill brings the New York State child care copayment formula closer to the recommended federal guidance and conforms our copayment formula to Social Services Law 410-x(2)(a) and 410-x (6) which require that families be provided "equitable access" to child care funds, and that the copayment should be "based upon the family's ability to pay." [SSL 410-x (6)].

Although the Governor has attached a \$40 million dollar cost to this proposal, he has not allocated the additional funds to support it. We support this proposal nonetheless but believe his cost estimate is probably overstated and we urge the legislature to provide any additional funds necessary to implement this proposal without a loss of slots. As illustrated in Chart B, for families who live in counties that have chosen multipliers between and including 10-20%, there is no cost to the Governor's proposal because these copayments do not exceed 20% of the

family income over the poverty level. Thirty-one counties have chosen copayments between 10-20%¹⁷ meaning that in those counties, there will be no cost at all. Additionally, there is only a *de minimus* cost for families at or below the poverty level, because even under the current copayment scheme, these families can be charged no more than \$2 per week. Finally, for families in counties with the 35% multiplier, the cost is under \$900 per year for families with incomes at 150% of poverty, less than \$2500 per year for families between 151% and 175 % of poverty, and less than \$3230 for families between 176% of poverty and 200% of poverty.

Recommendation: The Legislature should support the proposal in the Governor’s Article VII bill (ELFA, § Z) to align the New York State child care copayment formula with federal guidance on affordability, so that families in all counties have “equitable access” to child care subsidies. In addition, the legislature should allocate funding to assure that the number of available slots remain stable.

Thank you for the opportunity to submit this testimony. We look forward to working with you to achieve positive, progressive change in this legislative session. For questions please contact eforsyth@empirejustice.org or 518-935-2843.

¹⁷ See: <https://empirejustice.org/child-care-copayment-disparities-county/>

CHART A

Copayments Under Current Law

[Effective 6/1/19-5/31/20 (OCFS 19 INF-02)]

Family size = 3		125%		140%		150%		167%		175%		200%		225%		250%		275%		
Eligibility %	FPL (100%)	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	
Annual Income	\$21,330.00	\$26,662.50		\$29,862.00		\$31,995.00		\$35,621.10		\$37,327.50		\$42,660.00		\$47,992.50		\$53,325.00		\$58,657.50		
Copay multiplier is applied against this income.	\$0.00	\$5,332.50		\$8,532.00		\$10,665.00		\$14,291.10		\$15,997.50		\$21,330.00		\$26,662.50		\$31,995.00		\$37,327.50		
Multiplier	Yearly Copay*	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income	Yearly Copay	% of Income
10.0%	\$0.00	0.0%	\$831.20	2.9%	\$1,066.50	3.3%	\$1,392.26	4.0%	\$1,599.75	4.3%	\$2,133.00	5.0%	\$2,666.25	5.6%	\$3,199.50	6.0%	\$3,732.75	6.4%	\$3,732.75	6.4%
15.0%	\$0.00	0.0%	\$1,246.80	4.3%	\$1,599.75	5.0%	\$2,088.39	6.0%	\$2,399.63	6.4%	\$3,199.50	7.5%	\$3,999.38	8.3%	\$4,799.25	9.0%	\$5,599.13	9.5%	\$5,599.13	9.5%
20.0%	\$0.00	0.0%	\$1,662.40	5.7%	\$2,133.00	6.7%	\$2,784.52	8.0%	\$3,199.50	8.6%	\$4,266.00	10.0%	\$5,332.50	11.1%	\$6,399.00	12.0%	\$7,465.50	12.7%	\$7,465.50	12.7%
25.0%	\$0.00	0.0%	\$2,597.50	7.1%	\$2,597.50	8.3%	\$3,480.65	10.0%	\$3,896.25	10.7%	\$5,195.00	12.5%	\$6,493.75	13.9%	\$7,792.50	15.0%	\$9,091.25	15.9%	\$9,091.25	15.9%
27.0%	\$0.00	0.0%	\$2,805.30	7.7%	\$2,805.30	9.0%	\$3,759.10	10.8%	\$4,207.95	11.6%	\$5,759.10	13.5%	\$7,013.25	15.0%	\$8,415.90	16.2%	\$9,818.55	17.2%	\$9,818.55	17.2%
30.0%	\$0.00	0.0%	\$2,493.60	8.6%	\$3,199.50	10.0%	\$4,176.78	12.0%	\$4,799.25	12.9%	\$6,399.00	15.0%	\$7,998.75	16.7%	\$9,598.50	18.0%	\$10,909.50	18.6%	\$10,909.50	18.6%
35.0%	\$0.00	0.0%	\$2,909.20	10.0%	\$3,732.75	11.7%	\$4,872.91	14.0%	\$5,599.13	15.0%	\$7,465.50	17.5%	\$9,331.88	19.4%	\$10,909.50	20.5%	\$12,727.75	21.7%	\$12,727.75	21.7%

Under current law, the copayment is calculated on the amount of the household income that exceeds the poverty level.

* State regulations require a minimum weekly fee of \$1 (\$52 per year) . 18 NYCRR 415.3(4).

CHART B

Copayments Under Proposed Law

Article VII amendments to SSL 410-w(8) and 410-x(6) (ELFA, Sec. Z) limiting copayments to 20% of household income over poverty

Family size = 3

Eligibility % Annual Income over FPL	125%		140%		150%		167%		175%		200%		225%		250%		275%	
	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income	Yearly Copay	% of Gross Income
\$0.00	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%	\$0.00	0.0%
\$21,720.00	\$27,150.00	2.0%	\$30,408.00	2.9%	\$32,580.00	3.3%	\$36,272.40	4.0%	\$38,010.00	4.3%	\$43,440.00	5.0%	\$48,870.00	5.6%	\$54,300.00	6.0%	\$59,730.00	6.4%
\$0.00	\$5,430.00	3.0%	\$8,688.00	4.3%	\$10,860.00	5.0%	\$14,552.40	6.0%	\$16,290.00	6.4%	\$21,720.00	7.5%	\$27,150.00	8.3%	\$32,580.00	9.0%	\$38,010.00	9.5%
\$0.00	\$543.00	2.0%	\$868.80	2.9%	\$1,086.00	3.3%	\$1,455.24	4.0%	\$1,629.00	4.3%	\$2,172.00	5.0%	\$2,715.00	5.6%	\$3,258.00	6.0%	\$3,801.00	6.4%
\$0.00	\$814.50	3.0%	\$1,303.20	4.3%	\$1,629.00	5.0%	\$2,182.86	6.0%	\$2,443.50	6.4%	\$3,258.00	7.5%	\$4,072.50	8.3%	\$4,887.00	9.0%	\$5,701.50	9.5%
\$0.00	\$1,086.00	4.0%	\$1,737.60	5.7%	\$2,172.00	6.7%	\$2,910.48	8.0%	\$3,258.00	8.6%	\$4,344.00	10.0%	\$5,430.00	11.1%	\$6,516.00	12.0%	\$7,602.00	12.7%
\$0.00	\$1,086.00	4.0%	\$1,737.60	5.7%	\$2,172.00	6.7%	\$2,910.48	8.0%	\$3,258.00	8.6%	\$4,344.00	10.0%	\$5,430.00	11.1%	\$6,516.00	12.0%	\$7,602.00	12.7%
\$0.00	\$1,086.00	4.0%	\$1,737.60	5.7%	\$2,172.00	6.7%	\$2,910.48	8.0%	\$3,258.00	8.6%	\$4,344.00	10.0%	\$5,430.00	11.1%	\$6,516.00	12.0%	\$7,602.00	12.7%
\$0.00	\$1,086.00	4.0%	\$1,737.60	5.7%	\$2,172.00	6.7%	\$2,910.48	8.0%	\$3,258.00	8.6%	\$4,344.00	10.0%	\$5,430.00	11.1%	\$6,516.00	12.0%	\$7,602.00	12.7%

*The proposed law will effectively nullify all multipliers over 20%.